

CITY OF TEMPE
REGULATIONS - LICENSE, PRIVILEGE, AND EXCISE TAXES

Reg. 16-100.1. Brokers.

- (a) For the purposes of proper administration of this Chapter and to prevent evasion of taxes imposed, brokers shall be wherever necessary treated as taxpayers for all purposes, and shall file a return and remit the tax imposed on the activity on behalf of the principal. No deduction shall be allowed for any commissions or fees retained by such broker, except as provided in Section 16-405, relating to advertising commissions.
- (b) Brokers for vendors. A broker acting for a seller, lessor, or other similar person deriving gross income in a category upon which this Chapter imposes a tax shall be liable for such tax, even if his principal would not be subject to the tax if he conducted such activity in his own behalf, by reason of the activity being deemed a "casual" one. For example:
 - (1) An auctioneer or other sales agent of tangible personal property is subject to the tax imposed upon retail sales, even if such sales would be deemed "casual" if his principal had sold such items himself.
 - (2) A property manager is subject to the tax imposed upon rental, leasing, or licensing of real property, even if such rental, leasing, or licensing would be deemed "casual" if his principal managed such real property himself.
- (c) Brokers for vendees. A broker acting solely for a buyer, lessee, tenant, or other similar person who is a party to a transaction which may be subject to the tax, shall be liable for such tax and for filing a return in connection with such tax only to the extent his principal is subject to the tax.
- (d) The liability of a broker does not relieve the principal of liability except upon presentation to the Tax Collector of proof of payment of the tax, and only to the extent of the correct payment. The broker shall be relieved of the responsibility to file and pay taxes upon the filing and correct payment of such taxes by the principal.
- (e) (Reserved)
- (f) Location of business. Retail sales by brokers acting for another person shall be deemed to have occurred at the regular business location of the broker, in a manner similar to that used to determine "Out-Of-City Sales"; provided, however, that a auctioneer is deemed to be engaged in business at the site of each action.

(Ord. No. 87.17, § 1, 4-23-87; Ord. No. 88.32, § 1(19), 4-28-88)

CITY OF TEMPE
REGULATIONS - LICENSE, PRIVILEGE, AND EXCISE TAXES

Reg. 16-100.2. Delivery, installation, or other direct customer services.

- (a) *"Delivery Charges"* exist only when the total charges to the ultimate customer or consumer include, as separately charged to the ultimate customer, charges for delivery to the ultimate consumer, whether the place of delivery is within or without the City, and when the taxpayer's books and records show the separate delivery charges.
 - (1) Identification to the customer or consumer that the listed price has "delivery included" or other similar expression is insufficient to show the delivery as a separate charge. Only the separately stated charge for the delivery shall be deemed a "delivery charge".
 - (2) *Freight in.* Charges for delivery from place of production or the manufacturer to the vendor either directly or through a chain of wholesalers or jobbers or other middlemen are deemed "freight in" and are not considered delivery.
- (b) *"Installation"*, as used in this definition, relates only to tangible personal property. Installation to real property is deemed construction contracting in this Chapter. Examples of installation relating to tangible personal property are: installing a radio in an automobile; applying sun screens on the windows of a boat; installing cabinets, carpeting, or "built-in appliances" to a camper or motorized recreational vehicle.
- (c) Repair of tangible personal property is not included in this definition. See Regulation 16-465.1.
- (d) *"Direct Customer Services"* means services other than repair rendered directly to the customer. Services or labor provided by any person prior to the transfer of tangible personal property to the customer or consumer are not included in this definition. In the following examples, the requirements of Subsection (e) below are referred to by the words "identify" or "identification."
 - (1) A retailer sells a customer a \$100 "plug-in" appliance, with a \$25 delivery and installation charge. If the retailer identifies the \$25 delivery and installation charge, it is a charge for direct customer services.
 - (2) A caterer charges his customer \$1,000 for the food and drink served, \$300 for setup and site cleanup, and \$500 for bartender and waiters. If all charges are properly identified, only the \$300 for set up and cleanup is a charge for direct customer services, and the \$1,500 for food and service is restaurant gross income.
 - (3) Persons engaged in engraving on wood, metal, stone, etc. or persons engaged in retouching photographs or paintings may consider such charges

CITY OF TEMPE
REGULATIONS - LICENSE, PRIVILEGE, AND EXCISE TAXES

for labor as direct customer services.

- (4) All charges by a photographer resulting in the sale of a photograph (sitting charges, developing, making enlargements, retouching, etc.) for services that occur prior to transfer of tangible personal property are not direct customer services.
- (5) An equipment rental company charging \$25 for delivery may consider such delivery charge as a charge for direct customer service only if such charge is properly identified.
- (6) Even if identified, charges for labor incurred in the production of any manufactured article or of a custom-made article (jewelry, artwork, tailoring, draperies, etc.) are not included in this definition, as such labor occurs prior to the transfer of property.

(e) Recordkeeping requirements.

- (1) Any person who engages in transactions involving these services must:
 - (A) Separately bill, invoice, or charge the customer for such services in a manner by which the customer or consumer may readily identify the specific dollar amount of the service charge; and
 - (B) Maintain business books and records in a manner in which the separate charge for such services can be clearly identified, to the satisfaction of the Tax Collector.
- (2) Rendering a statement to a customer for a transaction involving such services and the transfer of tangible personal property which only indicates the total amount of the charges with words such as "services included" or "charge includes labor and parts" or a similar expression does not satisfy the requirements of this Subsection.

(Ord. No. 87.17, § 1, 4-23-87)

Reg. 16-100.3. Retailers.

When in the opinion of the Tax Collector it is necessary for efficient administration of this Chapter, he may regard any salesman, representative, peddler, canvasser, or agent of any dealer, distributor, supervisor, or employer under whom he operates or from whom he obtains tangible personal property for sale, rental, lease, or license as a retailer for the purposes of this Chapter, irrespective of whether he is making sales, rentals, leases, or licenses on his own behalf or on behalf of others. The Tax Collector may also regard such dealer, distributor, supervisor, or employer as a retailer for the purposes of this Chapter.

(Ord. No. 87.17, § 1, 4-23-87)

CITY OF TEMPE
REGULATIONS - LICENSE, PRIVILEGE, AND EXCISE TAXES

Reg. 16-100.4. Out-Of-City/Out-Of-State Sales: Sales to Indians.

Sales to Indians or tribal councils by vendors located within the city shall be deemed sales within the city, unless all of the following conditions exist:

- (1) The vendor has properly accounted for such sales, in a manner similar to the recordkeeping requirements for Out-Of-City sales; and
- (2) All of the following elements of the sale exist:
 - (A) Solicitation and placement of the order occurs on the reservation;
and
 - (B) Delivery is made to the reservation; and
 - (C) Payment originates from the reservation.

(Ord. No. 88.32, § 1(20), 4-28-88)

Reg. 16-100.5. Remediation Contracting.

The following activities are considered remediation contracting and are exempt:

- (1) Excavation, transportation, treatment, and/or disposal of contaminated soil for purposes of site remediation (rather than characterization);
- (2) Installation of groundwater extraction and/or injection wells for purposes of groundwater remediation;
- (3) Installation of pumps and piping into groundwater extraction wells for remediation purposes;
- (4) Installation of vapor extraction wells for the purpose of soil or groundwater remediation;
- (5) Construction of remediation systems, such as groundwater treatment plants, vapor extraction systems, or air injection systems;
- (6) Connection of remediation systems to utilities;
- (7) Abandonment of groundwater or vapor extraction wells;
- (8) Removal/demolition of remediation systems;
- (9) Capping/closure construction activities; and
- (10) Service or handling charges for subcontracted remediation contracting

CITY OF TEMPE
REGULATIONS - LICENSE, PRIVILEGE, AND EXCISE TAXES

activities.
(Ord. No. 98.12, 3-12-98)

Reg. 16-115.1. Computer hardware, software, and data services.

(a) Definitions.

- (1) "Computer Hardware" (also called "computer equipment" or "peripherals") is the components and accessories which constitute the physical computer assembly, including but not limited to: central processing unit, keyboard, console, monitor, memory unit, disk drive, tape drive or reader, terminal, printer, plotter, modem, document sorter, optical reader and/or digitizer, network.
- (2) "Computer Software" (also called "computer program") is tangible personal property, and includes:
 - (A) "Operating Program (Software)" (also called "executive program (software)"), which is the programming system or technical language upon which or by means of which the basic operating procedures of the computer are recorded. The operating program serves as an interface with user applied programs and allows the user to access the computer's processing capabilities.
 - (B) "Applied Program (Software)", which is the programming system or technical language (including the tape, disk, cards, or other medium upon which such language or program is recorded) designed either for application in a specialized use, or upon which or by means of which a plan for the solution of a particular problem is based. Typically, applied programs can be transferred from one computer to another via storage media. Examples of applied programs include: payroll processing, general ledger, sales data, spreadsheet, word processing, and data management programs.
- (3) "Storage Medium" is any hard disk, compact disk, floppy disk, diskette, diskpack, magnetic tape, cards, or other medium used for storage of information in a form readable by a computer, but not including the memory of the computer itself.
- (4) A "Terminal Arrangement" (also called "'on-line' arrangement") is any agreement allowing access to a remote central processing unit through telecommunications via hardware.
- (5) A "Computer Services Agreement" (also called "data services agreement") is an agreement allowing access to a computer through a third-party operator.

CITY OF TEMPE
REGULATIONS - LICENSE, PRIVILEGE, AND EXCISE TAXES

- (b) For the purposes of this Chapter, transfer of title and possession of the following are deemed sales of tangible personal property and any other transfer of title, possession, or right to use for a consideration of the following is deemed rental, leasing, or licensing of tangible personal property:
- (1) Computer hardware or storage media. Rental, leasing, or licensing for use of computer hardware or storage media includes the lessee's use of such hardware or storage media on the lessor's premises.
 - (2) Computer software which is not custom computer programming. Such pre-written ("canned") programs may be transferred to a customer in the form of punched cards, magnetic tape, or other storage medium, or by listing the program instructions on coding sheets. Transfer is deemed to have occurred whether title to the storage medium upon which the program is recorded, coded, or punched passes to the customer or the program is recorded, coded, or punched on storage medium furnished by the customer. Gross income from the transfer of such pre-written programs includes:
 - (A) The entire amount charged to the customer for the sale, rental, lease, or license for use of the storage medium or coding sheets on which or into which the pre-written program has been recorded, coded, or punched.
 - (B) The entire amount charged for the temporary transfer or possession of a pre-written program to be directly used or to be recorded, coded, or punched by the customer on the customer's premises.
 - (C) License fees, royalty fees, or program design fees; any fee present or future, whether for a period of minimum use or of use for extended periods, relating to the use of a pre-written program.
 - (D) The entire amount charged for transfer of a pre-written ("canned") program by remote telecommunications from the transferor's place of business to or through the customer's computer.
 - (E) Any charge for the purchase of a maintenance contract which entitles the customer to receive storage media on which pre-written program improvements or error corrections have been recorded or to receive telephone or on-site consultation services, provided that:
 - (i) If such maintenance contract is not optional with the customer, then the charges for the maintenance contract, including the consultation services, are deemed gross income from the transfer of the pre-written program.

CITY OF TEMPE
REGULATIONS - LICENSE, PRIVILEGE, AND EXCISE TAXES

- (ii) If such maintenance contract is optional with the customer but the customer does not have the option to purchase the consultation services separately from the storage media containing the improvements or error corrections, then the charges for the maintenance contract, including the consultation services, are deemed gross income from the transfer of the pre-written program.
 - (iii) If such maintenance contract is optional with the customer and the customer may purchase the consultation services separately from the storage media containing the improvements or error corrections, then only the charges for such improvements or error corrections are deemed gross income from the transfer of a pre-written program and charges for consultation are deemed to be charges for professional services.
- (c) Producing the following by means of computer hardware is deemed to be the activity of job printing for the purposes of this Chapter:
 - (1) Statistical reports, graphs, diagrams, microfilm, microfiche, photorecordings, or any other information produced or compiled by a computer; except as provided in Subsection (e) below.
 - (2) Additional copies of records, reports, manuals, tabulations, etc. "Additional Copies" are any copies in excess to those produced simultaneously with the production of the original and on the same printer, whether such copies are prepared by running the same program, by using multiple printers, by looping the program, by using different programs to produce the same output, or by other means.
- (d) Charges for the use of communications channel in conjunction with a terminal arrangement or data services agreement are deemed gross income from the activity of providing telecommunication services.
- (e) The following transactions are deemed direct customer services, provided that charges for such services are separately stated and maintained as provided by Regulation 16-100.2(e):
 - (1) "Custom (Computer) Programming", which is any computer software which is written or prepared for a single customer, including those services represented by separately stated charges for the modification of existing pre-written programs.
 - (A) Customer computer programming is deemed a professional service regardless of the form in which the programming is transferred.

CITY OF TEMPE
REGULATIONS - LICENSE, PRIVILEGE, AND EXCISE TAXES

- (B) Custom programming includes such programming performed in connection with the sale, rental, lease, or license for use of computer hardware, provided that the charges for such are separately stated from the charges for the hardware.
 - (C) Custom computer programming includes a program prepared to the special order of a customer who will use the program to produce copies of the program for sale, rental, lease, or license. The subsequent sale, rental, lease, or license of such a program is deemed the sale, rental, lease, or license of a pre-written program.
- (2) Training services related to computer hardware or software, provided further that:
 - (A) The provider of such training services is deemed the ultimate consumer of all tangible personal property used in training others or provided to such trainees without separately itemized charge for the materials provided.
 - (B) Training deemed a direct customer service does not include:
 - (i) Training materials, books, manuals, etc. furnished to customers for a charge separate from the charge for training services.
 - (ii) Training provided to customers without separate charge as part of the sale, rental, lease, or license of computer hardware or software, or as part of a terminal arrangement or data services agreement.
- (3) The use of computer time through the use of a terminal arrangement or a data service agreement, but not charges for computer hardware located at the customer's place of business (for example, the terminal, a printer attached to the terminal, a modem used to communicate with the remote central processing unit over a telephone line).
- (4) Compiling and producing, as part of a terminal arrangement or computer services agreement, original copies of statistical reports, graphs, diagrams, microfilm, microfiche, photorecordings, or other information for the same person who supplied the raw data used to create such reports.
- (f) The purchase, rental, lease, or license for use of computer hardware, storage media, or computer software which is not deemed custom programming is deemed the use or storage of tangible personal property for the purpose of this Chapter, and the amount which may be subject to Use Tax shall be determined in the same manner as the determination of the gross income from the sale,

CITY OF TEMPE
REGULATIONS - LICENSE, PRIVILEGE, AND EXCISE TAXES

rental, lease, or license for use of such.
(Ord. No. 87.17, § 1, 4-23-87)

Reg. 16-120.1. Reserved.

(Ord. No. 87.17, § 1, 4-23-87)

Reg. 16-200.1. When deposits are includable in gross income.

- (a) Refundable deposits shall be includable as gross income of the taxpayer for the month in which the deposits are forfeited by the lessee.
- (b) Non-refundable deposits for cleaning, keys, pet fees, maintenance, or for any other purpose are deemed gross income upon receipt.

(Ord. No. 87.17, § 1, 4-23-87; Ord. No. 88.32, § 1(22), 4-28-88; Ord. No. 95.03, 1-12-95)

Reg. 16-250.1. Excess tax collected.

If a taxpayer collects taxes in excess of the combined tax from any customer in any transaction, all such excess tax shall be paid to the taxing jurisdictions in proportion to their effective rates. The right of the taxpayer to charge his customer for his own liability for tax does not allow the taxpayer to enrich himself at the cost of his customers.

(Ord. No. 87.17, § 1, 4-23-87)

Reg. 16-270.1. Proprietary activities of municipalities are not considered activities of a governmental entity.

The following activities, when performed by a municipality, are considered to be activities of a person engaged in business for the purposes of this Chapter, and not excludable by reason of Section 16-270:

- (a) Rental, leasing, or licensing for use of real property to other than another department or agency of the municipality.
- (b) Producing, providing, or furnishing electricity, electric lights, current, power, gas (natural or artificial), or water to consumers or ratepayers.
- (c) Sale of tangible personal property to the public, when similar tangible personal property is available for sale by other persons, as, for example, at police or surplus auctions.

(Ord. No. 87.17, § 1, 4-23-87)

Reg. 16-270.2. Proprietary clubs.

- (a) Equity requirements. In order to qualify for exclusion under Section 14- 270, a proprietary club must actually be owned by the members. For the purposes of qualification, a club will be deemed to be member-owned if at least eighty-five

CITY OF TEMPE
REGULATIONS - LICENSE, PRIVILEGE, AND EXCISE TAXES

percent (85%) of the equity of the total amount of club-owned property is owned by bona fide individual members whose membership is represented in the form of shares, certificates, bonds, or other indicia of capital interest. A corporation may be considered an individual owner provided that it owns a membership solely for the benefit of one or more of its employees and it is not engaged in any business activity connected with the operation of the club.

- (b) Gross revenue requirements. In computing gross revenue for the computation of this fifteen percent (15%) rule of Subsection 14- 270(c)(1),

- (1) The following shall be excluded:

- (A) Membership dues.
- (B) Membership fees which relate to the general admission to the club on a periodic (or perpetual) basis.
- (C) Assessments.
- (D) Special fund raising events, raffles, etc.
- (E) Donations, gifts, or bequests.
- (F) Gate receipts, admissions, and program advertising for not more than one tournament in any calendar year.

- (2) The following must be included:

- (A) Green fees, court use fees, and similar charges for the actual use of a facility or part thereof.
- (B) Pro shop sales if the shop is owned by the club.
- (C) Golf cart rental if the carts are owned by the club.
- (D) Rentals, percentages, or commissions received for permitting the use of the premises or any portion thereof by a caterer, concessionaire, professional, or any other person for sales, rental, leasing, licensing, catering, food or beverage service, or instruction.
- (E) All receipts from food or beverage sales, room use or rental charge, corkage and catering charges, and similar receipts.
- (F) Locker and locker room fees and attendants charges if paid to the club.

CITY OF TEMPE
REGULATIONS - LICENSE, PRIVILEGE, AND EXCISE TAXES

(G) Tournament entry fees other than entry fees for the one annual tournament exempt under Subsection (b)(1)(F) above.

(Ord. No. 87.17, § 1, 4-23-87)

Reg. 16-300.1. Who must apply for a license.

(a) For the purposes of determining whether a license is required under Section 16-300, a person shall be deemed to be "engaged in or continuing in business" within the City, if he meets any of the following conditions:

- (1) He is engaged in any activity subject to the City's Privilege Taxes as principal or broker.
- (2) He has or maintains within the City directly, or if a corporation by a subsidiary, an office, distribution house, sales house, warehouse or other place of business, or any agent or other representative operating within this City under the authority of such person or if a corporation its subsidiary, irrespective of whether such place of business or agent or other representative is located here permanently or temporarily or whether such person or subsidiary is authorized or licensed to do business in this State or this City.
- (3) He is soliciting sales, orders, contracts, leases, and other similar forms of business relationships, within the City from customers, consumers, or users located within the City, by means of salesmen, solicitors, agents, representatives, brokers, and other similar agents or by means of catalogs or other advertising, whether such orders are received or accepted within or without this City.
- (4) He is regularly engaged in any activity subject to the City's Use Tax; provided, however, that individuals are not normally required to obtain a license because they acquire items outside the City for their own or their family's personal use and enjoyment.
- (5) (Reserved)

(b) For the purposes of obtaining a Privilege License, a person who has less than two (2) apartments, houses, trailer spaces, or other lodging spaces available for rent, lease, or license within the State is not considered to be regularly engaged in business and need not obtain a Privilege License; provided, however, if that person is also receiving income from the activity of renting, leasing, or licensing one (1) or more commercial properties or units within a commercial property, he is considered to be regularly engaged in business and must obtain licenses for all his rental, lease, or license property.

(Ord. No. 87.17, § 1, 4-23-87)

CITY OF TEMPE
REGULATIONS - LICENSE, PRIVILEGE, AND EXCISE TAXES

Reg. 16-300.2. Reserved.

(Ord. No. 90.25, 7-12-90)

Reg. 16-310.1. Reserved.

(Ord. No. 88.32, § 1(23), 4-28-88)

Reg. 16.310.2. Reserved.

(Ord. No. 88.32, § 1(23), 4-28-88)

Reg. 16.310.3. Reserved.

(Ord. No. 88.32, § 1(23), 4-28-88)

Reg. 16-350.1. Recordkeeping: income.

The minimum records required for persons having gross income subject to, or exempt or excluded from, tax by this Chapter must show:

- (a) The gross income of the taxpayer attributable to any activity occurring in whole or in part in the City.
- (b) The gross income taxable under this Chapter, divided into categories as stated in the official City tax return.
- (c) The gross income subject to Arizona Transaction Privilege Taxes, divided into categories as stated in the official State tax return.
- (d) The gross income claimed to be exempt, and with respect to each activity or transaction so claimed:
 - (1) If the transaction is claimed to be exempt as a sale for resale or as a sale, rental, lease, or license for use of rental equipment:
 - (A) The City Privilege License number and State Transaction Privilege Tax License number of the customer (or the equivalent city, if applicable, and State tax numbers of the city and State where the customer resides), and
 - (B) The name, business address, and business activity of the customer, and
 - (C) Evidence sufficient to persuade a reasonably prudent businessman that the transaction is believed to be in good faith a purchase for resale, or a purchase, rental, lease, or license for use of rental equipment, by the vendee in the ordinary and regular course of his business activity, as provided by Regulation.

CITY OF TEMPE
REGULATIONS - LICENSE, PRIVILEGE, AND EXCISE TAXES

(2) If the transaction is claimed to be exempt for any other reason:

- (A) The name, business address, and business activity of the customer, and
 - (B) Evidence which would establish the applicability of the exemption to a reasonably prudent businessman acting in good faith. Ordinary business documentation which would reasonably indicate the applicability of an exemption shall be sufficient to relieve the person on whom the tax would otherwise be imposed from liability therein, if he acts in good faith as provided by Regulation.
- (e) With respect to those allowed deductions or exclusions for tax collected or charges for delivery or other direct customer services, where applicable, evidence that the deductible income has been separately stated and shown on the records of the taxpayer and on invoices or receipts provided to the customer. All other deductions, exemptions, and exclusions shall be separately shown and substantiated.
- (f) With respect to special classes and activities, such other books, records, and documentation as the Tax Collector, by regulation, shall deem necessary for specific classes of taxpayer by reason of the specialized business activity of any such class.
- (g) In all cases, the books and records of the taxpayer shall indicate both individual transaction amounts and totals for each reporting period for each category of taxable, exempt, and excluded income defined by this Chapter.

(Ord. No. 87.17, § 1, 4-23-87)

Reg. 16-350.2. Recordkeeping: expenditures.

The minimum records required for persons having expenditures, costs, purchases and rental or lease or license expenses subject to, or exempt or excluded from, tax by this Chapter are:

- (a) The total price of all goods acquired for use or storage in the City.
- (b) The date of acquisition and the name and business address of the seller or lessor of all goods acquired for use or storage in the City.
- (c) Documentation of taxes, freight, and direct customer service labor separately charged and paid for each purchase, rental, lease, or license.
- (d) The gross price of each acquisition claimed as exempt from tax, and with respect to each transaction so claimed, sufficient evidence to satisfy the Tax Collector that the exemption claimed is applicable.
- (e) As applicable to each taxpayer, documentation sufficient to the Tax Collector,

CITY OF TEMPE
REGULATIONS - LICENSE, PRIVILEGE, AND EXCISE TAXES

so that he may ascertain:

- (1) All construction expenditures and all Privilege and Use Taxes claimed paid, relating to owner-builders and speculative builders.
 - (2) Disbursement of collected gratuities and related payroll information required of restaurants.
 - (3) (Reserved)
 - (A) (Reserved)
 - (B) (Reserved)
 - (4) The validity of any claims of proof of exemption, as provided by Regulation.
 - (5) A claimed alternative prior value for reconstruction.
 - (6) All claimed exemptions to the Use Tax imposed by Article VI of this Chapter.
 - (7) Costs used to compute the "computed charge" claimed for retail service and repair.
 - (8) (Reserved)
 - (9) (Reserved)
 - (f) Any additional documentation as the Tax Collector, by Regulation, shall deem necessary for any specific class of taxpayer by reason of the specialized business activity of specific exemptions afforded to that class of taxpayer.
 - (g) In all cases, the books and records of the taxpayer shall indicate both individual transaction amounts and totals for each reporting period for each category of taxable, exempt, and excluded expenditures as defined by this Chapter.
- (Ord. No. 87.17, § 1, 4-23-87)

Reg. 16-350.3. Recordkeeping: out-of-City and out-of-State sales.

- (a) Out-of-City sales. Any person engaging or continuing in a business who claims out-of-City sales shall maintain and keep accounting records or books indicating separately the gross income from the sales of tangible personal property from such out-of-City branches or locations.
- (b) Out-of-State sales. Persons engaged in a business claiming out-of-State sales

CITY OF TEMPE
REGULATIONS - LICENSE, PRIVILEGE, AND EXCISE TAXES

shall maintain accounting records or books indicating for each out-of-State sale the following documentation:

- (1) Documentation of location of the buyer at the time of order placement; and
- (2) Documentation of residency of the buyer, determined in the manner one determines if a person "resides within the City"; and
- (3) Shipping, delivery, or freight documents showing where the buyer took delivery; and
- (4) Documentation of intended location of use or storage of the tangible personal property sold to such buyer.

(Ord. No. 87.17, § 1, 4-23-87)

Reg. 16-360.1. Proof of exemption: sale for resale; sale, rental, lease, or license of rental equipment.

A claim of purchase for resale or of purchase, rental, lease, or license for rent, lease, or license is valid only if the evidence is sufficient to persuade a reasonably prudent businessman that the particular item is being acquired for resale or for rental, lease, or license in the ordinary course of business. The fact that the acquiring person possesses a Privilege License number, and makes a verbal claim of "sale for resale or lease" or "lease for re-lease" does not meet this burden and is insufficient to justify an exemption. The "reasonable evidence" must be evidence which exists objectively, and not merely in the mind of the vendor, that the property being acquired is normally sold, rented, leased, or licensed by the acquiring person in the ordinary course of business. Failure to obtain such reasonable evidence at the time of the transaction will be a basis for disallowance of any claimed deduction on returns filed for such transactions.

(Ord. No. 87.17, § 1, 4-23-87)

CITY OF TEMPE
REGULATIONS - LICENSE, PRIVILEGE, AND EXCISE TAXES

INVALID UNLESS COMPLETED IN FULL

VENDOR'S NAME _____
Sales Invoice No. _____

Customer's Exemption Claim
City of Tempe Privilege License (Sales) Tax

Customer's _____ Business _____ Name: _____

Customer's _____ Business _____ Address: _____

Specific Business Activity: _____

(e.g., if retailer, lessor, or manufacturer, specify items leased, sold or made, i.e., cars, computers, clothes, etc.)

Customer's License Nos. _____ City: _____ State: _____

ITEMS CLAIMED AS EXEMPT FROM TAX

_____ : All Items on This Invoice or Purchase Order.

or

_____ : Only Those Items marked with An "E".

REASON FOR CLAIMED EXEMPTION:

_____: The items claimed as exempt are sold, rented, leased, or licensed by the above named customer in the normal course of its business activity.

or

_____: The items claimed as exempt are exempt from the City of Tempe Privilege Tax for the following specific reason(s):

CUSTOMER'S CERTIFICATE

I certify that the above information is accurate to the best of my information and belief, and that I am authorized by the Customer above to acquire the items claimed as exempt on a tax-free basis on its behalf. I further understand that the making of a false or fraudulent claim to obtain a tax exemption is a Class One Misdemeanor under City Code Section 16-580.

Signature

Date

Print Name

Title

CITY OF TEMPE
REGULATIONS - LICENSE, PRIVILEGE, AND EXCISE TAXES

Reg. 16-360.2. Proof of exemption: exemption certificate.

For the purpose of proof of exemption, in transactions other than those in which the proof is set by standard documentation as detailed in Regulations 16-350.1 and 16-360.1, the minimum acceptable proof and documentation for each transaction shall be the completion, at the time of the transaction, in all material respects, of a certificate containing all the information set forth below. For the purpose of validating the vendor's claim of exemption, such certificate is sufficient if executed by any person with apparent authority to act for the customer, and the information provided validates the claim.

(Ord. No. 87.17, § 1, 4-23-87)

Reg. 16-405.1. Local advertising examples.

For the purposes of illustration only, and not by way of limitation, the following are provided as examples of local advertising subject to the tax:

- (1) Retail sales and rental establishments doing business within the State when only one commonly designated business entity is identified by name in the advertisement.
- (2) Financial institutions doing business within the State whether part of a national chain or local business only.
- (3) Sales of real estate located within the State.
- (4) Health care facilities located within the State.
- (5) Hotels, motels, and apartments, whether a national chain or local so long as the advertisement identifies any location within the State.
- (6) Brokers doing business within the State whether stockbrokers, real estate brokers, insurance brokers, etc.
- (7) Nonprofit organizations, which even though tax exempt, have an office, whether national, local, or branch, within the State.
- (8) Political activity, except United States Presidential and Vice Presidential candidates.
- (9) Restaurants or food service establishments which have one or more branches, outlets, or franchises within the State even though the local franchisee or licensee may not be responsible for the placement of the advertisement.
- (10) Services provided by individuals or entities within the State such as doctors, lawyers, architects, hairdressers, auto repair shops, counseling

CITY OF TEMPE
REGULATIONS - LICENSE, PRIVILEGE, AND EXCISE TAXES

services, utilities, contractors, auction houses, etc.

(11) Coupons redeemable only at a single commonly designated business entity within the State.

(12) Theater, sports, and other entertainment events held at locations within the State.

(Ord. No. 87.17, § 1, 4-23-87)

Reg. 16-405.2. Advertising activity within the City.

(a) *In General.* Except as provided elsewhere in this regulation, a person engaged in advertising activity shall be considered to be doing business entirely within the City if all or a major portion of the dissemination facilities such as broadcasting studios, printing plants, or distribution centers are located within the City limits. Remote studios patched to an in-City studio and subject to engineering modulation or control at the in-City studio are considered studios doing business in the City.

(b) *Billboards* and other outdoor advertising companies shall be considered to be doing business within the city to the extent they have billboards or similar displays within the city.

(c) *Publishers and distributors of newspaper and other periodicals* shall be subject to the tax upon advertising imposed by Section 16-405 and such tax shall be allocated in the manner prescribed by Subsection (e) of Section 16-435.

(Ord. No. 87.17, § 1, 4-23-87; Ord. No. 88.32, § 1(24), 4-28-88)

Reg. 16-407.1. Reserved.

(Ord. No. 88.32, § 1(25), 4-28-88)

Reg. 16-415.1. Distinction between the categories of construction contracting.

For the purposes of this Chapter, transactions involving improvements to, or sales of, real property are designated into one of the following categories, and these categorizations shall apply, whether or not a person designates himself as a contractor, construction manager, developer, or otherwise:

(a) A person performing improvements to real property is one of the following:

(1) An "*Owner-Builder*" when the work is performed by the owner or lessor or lessee-in-possession. An "owner-builder" may also be a "speculative builder".

(2) A "*Construction Contractor*" when performing work for the owner or lessor or lessee-in-possession of the real property, unless that person has

CITY OF TEMPE
REGULATIONS - LICENSE, PRIVILEGE, AND EXCISE TAXES

provided a written declaration stating that:

- (A) The owner-builder is improving the property for sale; and
 - (B) The owner-builder is liable for the tax for such construction contracting activity; and
 - (C) The owner-builder has provided the contractor his City Privilege License number.
- (3) A "Subcontractor" as provided in Section 16-415(c).
- (b) An owner or lessor ("owner-builder") of improved real property is one of the following:
- (1) A "Speculative Builder" as provided in Section 16-100; or
 - (2) An "owner builder who is not a speculative builder" in all other cases.
- (c) The terms "owner", "lessor", and "lessee-in-possession" shall be deemed to include any authorized agent for such person.
- (Ord. No. 87.17, § 1, 4-23-87; Ord. No. 90.25, 7-12-90)

Reg. 16-415.2. Distinction between construction contracting and certain related activities.

- (a) Certain rentals, leases, and licenses for use in connection with construction contracting. Rental, leasing, or licensing of earthmoving equipment with an operator shall be deemed construction contracting activity. Rental, leasing, or licensing of any other tangible personal property (with or without an operator) or of earthmoving equipment without an operator shall be deemed rental, leasing, or licensing of tangible personal property. For example:
- (1) Rental of a backhoe, bulldozer, or similar earthmoving equipment with an operator is construction contracting. Rental of these items without an operator is rental of tangible personal property.
 - (2) Rental of scaffolding, temporary fences, or barricades is rental of tangible personal property.
 - (3) Rental of pumps or cranes is rental of tangible personal property, whether or not an operator is provided with the equipment rented.
- (b) Distinction between construction contracting, retail, and certain direct customer service activities.

CITY OF TEMPE
REGULATIONS - LICENSE, PRIVILEGE, AND EXCISE TAXES

- (1) When an item is attached or installed on real property, it is a construction contracting activity and any subsequent repair, removal, or replacement of that item is construction contracting.
 - (2) Items attached or installed on tangible personal property are retail sales.
 - (3) Transactions where no tangible personal property is attached or installed are considered direct customer service activities (for example: carpet cleaning, lawn mowing, landscaping maintenance).
 - (4) Demolition, earth moving, and wrecking activities are considered construction contracting.
- (c) Sale of consumable goods incorporated into or applied to real property is considered a retail sale and not construction contracting. Examples of consumable goods are lubricants, faucet washers, and air conditioning coolant, but not paint.
- (d) Installation or removal of tangible personal property which has independent functional utility is considered a retail activity.
- (1) "Tangible personal property which has independent functional utility" must be able to substantially perform its function(s) without attachment to real property. "Attachment to real property" must include more than connection to water, power, gas, communication, or other service.
 - (2) Examples of tangible personal property which has independent functional utility include artwork, furnishings, "plug-in" kitchen equipment, or similar items installed by bolts or similar fastenings.
 - (3) Examples of tangible personal property which does not have independent functional utility include wall-to-wall carpeting, flooring, wallpaper, kitchen cabinets, or "built-in dishwashers or ranges.
 - (4) The installation of window coverings (drapes, mini-blinds, etc.) is always a retail activity.
- (Ord. No. 87.17, § 1, 4-23-87; Ord. No. 95.03, 1-12-95)

Reg. 16-416.1. Speculative builders: homeowner's bona fide non-business sale of a family residence.

- (a) A sale of a custom home, regardless of the stage of completion of such home shall be considered a "homeowner's bona fide non-business sale" and not subject to the tax on speculative builders if:
 - (1) The property was actually used as the principal place of family residence

CITY OF TEMPE
REGULATIONS - LICENSE, PRIVILEGE, AND EXCISE TAXES

or vacation residence by the immediate family of the seller for the six (6) months next prior to the offer for sale; and

- (2) The seller has not sold more than two (2) such residences (or, if the residence is a vacation residence, two (2) such vacation residences) within the thirty-six (36) months immediately prior to the offer for sale; and
 - (3) The seller has not licensed, leased, or rented the sold premises for any period within twenty-four (24) months prior to the offer for sale.
- (b) In the event that a homeowner of a family residence contracts with a licensed construction contractor for improvements to a residence, the construction contracting on a family residence shall be presumed to be for an owner's bona fide non-business purpose and all construction contractors shall be required to report and pay the tax imposed on all such improvements.
- (c) Purchases by a homeowner of tangible personal property for inclusion in any construction, alteration, or repair of his residence shall be subject to tax as retail sales to the ultimate consumer.
- (d) *"Owner" and "Homeowner"* as used in this Regulation shall only mean an individual, and no other entity, association, or representative shall qualify; except that an administrator, executor, personal representative, or guardian in guardianship or probate proceedings, for the estate of a deceased or incompetent person or a minor, may claim "homeowner" status for such person if such person would have otherwise qualified with respect to the specific property involved.
- (Ord. No. 87.17, § 1, 4-23-87; Ord. No. 95.03, 1-12-95)

Reg. 16-416.2. Reconstruction contracting.

- (a) *"Reconstruction (of Real Property)"* shall mean the subdividing of real property and, in addition, all construction contracting activities performed upon said real property; provided, however, that each of the following conditions are met:
- (1) A structure existed on said real property prior to the reconstruction activity; and
 - (2) The "prior value" of said structure exceeds fifteen percent (15%) of the "prior value" of the integrated property (land, improvements, and structure); and
 - (3) The total cost of all construction contracting activities performed on said real property in the twenty-four (24) month period prior to the sale of any part of the real property exceeds fifteen percent (15%) of the "prior value" of the real property; and

CITY OF TEMPE
REGULATIONS - LICENSE, PRIVILEGE, AND EXCISE TAXES

- (4) The structure which existed on the real property prior to the reconstruction activity still exists in some form upon the property, and is included, in whole or in part, in the property sold.
- (b) Except as provided in Subsection (c) below, "prior value" means the value of the total integrated property, with improvements, as existing immediately prior to any reconstruction activity. Where, according to title 42 of the Arizona Revised Statutes, a property's full cash value for secondary tax purposes is intended to represent the property's fair market value, "prior value" shall be the property's full cash value for secondary property tax purposes as determined by the County Assessor, in the year immediately preceding the year in which the reconstruction improvement(s) are or could have been included in the County Assessor's valuation. If the County Assessor's valuation is contested or appealed, the final determination at either the administrative or judicial level shall apply. Where, according to title 42 of the Arizona Revised Statutes, a property's full cash value for secondary property tax purposes is not intended to represent the property's fair market value, "prior value" shall be the property's fair market value prior to the reconstruction improvement(s).
- (c) "Alternative Prior Value" shall mean that as an alternative to the "prior value" defined above, the taxpayer may use his actual cost of the reconstructed property prior to reconstruction, provided that evidence of such cost is presented to the Tax Collector and is determined by the Tax Collector, in his sole discretion, to be satisfactory. Such evidence shall consist, as a minimum, of proof of the actual, arms-length acquisition price, accompanied by a full appraisal of all property involved which appraisal shall have been performed by a real estate broker or MAI appraiser specifically for the purpose of assisting in the acquisition and further shall have been performed on behalf of the seller or a lending institution which has lent at least sixty-five (65%) percent of the acquisition price. (Only long term lending - not interim or construction financing will be considered.) This alternative value shall be used only if the property was acquired by the reconstruction taxpayer not more than thirty-six (36) months prior to a "sale" as defined below.
- (d) A "sale" for the purpose of determining "alternative prior value" or "reconstruction" only shall be deemed to have occurred as of the date of the execution of a contract of sale or a deed (joint tenancy or warranty) whichever is earlier, to a purchaser or grantee of any single residential or other occupancy unit. In addition to the foregoing, a lease with option to purchase a single residential unit shall be considered a "sale" at the date of execution of such lease if said option is exercisable by the lessee in not later than nine (9) months. Further in the case of cooperative apartments, the sale date shall be the date of execution of the contract selling (subject or not to encumbrances, liens or security interests) of a share, or a sufficient number of shares which entitle the purchaser to the occupancy of a residential unit. In all cases a person shall include a husband and wife as a community, or any co-occupants of a single unit

CITY OF TEMPE
REGULATIONS - LICENSE, PRIVILEGE, AND EXCISE TAXES

as joint tenants.

(Ord. No. 87.17, § 1, 4-23-87; Ord. No. 95.03, 1-12-95; Ord. No. 96.42, 12-12-96)

Reg. 16-425.1. Distinction between job printing and certain related activities.

- (a) Computerized Printing. Computerized versions of all items which would be taxable under Section 16-425 if performed without computerized assistance are considered taxable under that Section, and therefore, are not exempt services.
- (b) Book publishing. The printing of books shall be deemed job printing. Sales of books shall be deemed retail sales.
- (c) Publication of newspapers, magazines, or other periodicals shall not be considered job printing for the purposes of this Chapter.

(Ord. No. 87.17, § 1, 4-23-87)

Reg. 16-435.1. Distinction between publishing of periodicals and certain related activities.

- (a) Book publishing shall not be considered publication of newspapers, magazines, or other periodicals for purposes of this Chapter. Sales of books shall be deemed retail sales. The printing of books shall be deemed job printing.
- (b) Publication of newspapers, magazines, or other periodicals shall not be considered job printing for the purposes of this Chapter.

(Ord. No. 87.17, § 1, 4-23-87)

Reg. 16-435.2. Advertising income of publishers and distributors of newspapers and other periodicals.

Publishers and distributors of newspapers and other periodicals shall be subject to the tax upon advertising imposed by Section 16-405 and such tax shall be allocated in the manner prescribed by Subsection (e) of Section 16-435.

(Ord. No. 88.32, § 1(26), 4-28-88)

Reg. 16-445.1. When the rental, leasing, and licensing of real property is exempt as "casual".

- (a) The person who has less than two (2) apartments, houses, trailer spaces, or other lodging spaces rented, leased or licensed, or available for rent, lease, or license within the State and no units of commercial property for rent, lease, or license within the State is deemed not to be in the business of renting, leasing, or licensing real property, and is therefore exempt from the tax imposed by Section 16-445 on such income. However, a person who has one (1) or more units of any other real property is deemed to be in the business of renting, leasing, or licensing real property, and subject to the tax imposed by Section 16-445 on

CITY OF TEMPE
REGULATIONS - LICENSE, PRIVILEGE, AND EXCISE TAXES

rental, lease, and license income from all such lodging spaces and commercial units of real estate even though said person may have fewer than two (2) lodging spaces within the State.

(b) (Reserved)

(Ord. No. 87.17, § 1, 4-23-87; Ord. No. 90.25, 7-12-90; Ord. No. 95.03, 1-12-95)

Reg. 16-445.2. Reserved.

(Ord. No. 87.17, § 1, 4-23-87; Ord. No. 88.32, § 1(27), 4-28-88; Ord. No. 95.03, 1-12-95)

Reg. 16-445.3. Rental, leasing, and licensing of real property as lodging: room and board; furnished lodging.

(a) Room and board.

(1) Rooming houses, lodges, or other establishments providing both lodging and meals, shall maintain a record of the separate charges made for the lodging and the meals.

(2) The charge for lodging shall be subject to the tax imposed by Section 16-444 or Section 16-445. The charge for meals is subject to the tax upon restaurants and bars prescribed by Section 16-455.

(b) Furnished lodging. A person who provides lodging with furnishings shall be deemed to be only in the business of rental, leasing, and licensing of lodging, and not in the business of rental, leasing, and licensing of such furnishings as tangible personal property, unless:

(1) Any tenant of any lodging space may choose to rent, lease, or license such lodging space either furnished or unfurnished; and

(2) The lessor separately charges tenants for lodging and for furnishings; and

(3) The lessor separately maintains his gross income from lodging and from furnishings separately in his accounting books and records.

If all of the above conditions are met, such person shall report both sources of income separately to the City.

(Ord. No. 87.17, § 1, 4-23-87; Ord. No. 95.03, 1-12-95)

Reg. 16-447.1. Gross income from rental leasing, and licensing for use of real property as lodging or lodging space to transients.

(a) If the charge made by a hotel to a transient includes any charge for services or accommodations in addition to that of lodging and/or the use of lodging space, then such portion of the total charge as represents only the charge for the use of

CITY OF TEMPE
REGULATIONS - LICENSE, PRIVILEGE, AND EXCISE TAXES

the room and/or lodging space shall be distinctly set out and billed to such transient by such hotel as a separate item, or the entire charge shall be deemed charge for use of lodging space subject to the tax imposed by Section 16-447.

- (b) A separately itemized charge for use of the furnishings contained in lodging or lodging space rented, leased, or licensed to a transient shall be deemed gross income from the business of renting, leasing, and licensing lodging to a transient. Furthermore, in regard to such tangible personal property, such person is deemed not in the business of rental, leasing, and licensing of tangible personal property for all purposes of this Chapter.

- (c) Complimentary food and drink. Persons engaged in the business of rental, leasing, and licensing of lodging to transients shall include charges for complimentary food and drink as gross income from the business of rental, leasing, and licensing of lodging to transients, and shall not be deemed in the restaurant business for all purposes of this Chapter, unless such charges:

- (1) Are made only at the request of the transient, or as a separate, optional charge for consuming specific food or drink (for example, "room service" charges; and
- (2) Are commensurate with charges for like quantity and type of food consumed by patrons of persons engaged in the restaurant business.

(Ord. No. 87.17, § 1, 4-23-87; Ord. No. 88.33, § 2, 4-28-88)

Reg. 16-450.1. Distinction between rental, leasing, and licensing for use of tangible personal property and certain related activities.

- (a) Certain rentals, leases, and licenses for use in connection with construction contracting. Rental, leasing, or licensing of earth moving equipment with an operator shall be deemed construction contracting activity. Rental, leasing, or licensing of any other tangible personal property (with or without an operator) or of earth moving equipment without an operator shall be deemed rental, leasing, or licensing of tangible personal property. For example:

- (1) Rental of a back hoe, bulldozer, or similar earth moving equipment with operator is construction contracting. Rental of these items without an operator is rental of tangible personal property.
- (2) Rental of scaffolding, temporary fences, or barricades is rental of tangible personal property.
- (3) Rental of pumps or cranes is rental of tangible personal property, regardless of whether or not an operator is included with the equipment rented.

CITY OF TEMPE
REGULATIONS - LICENSE, PRIVILEGE, AND EXCISE TAXES

- (b) Distinction between equipment rental, leasing, or licensing for use and transporting for hire. The hiring of mobile equipment (cranes, airplanes, limousines, etc.) is considered rental, leasing, or licensing of tangible personal property whenever the charge is for a fixed sum or hourly rate. By comparison, the activity of a common carrier conveying goods or persons for a fee based upon distance, and not time, shall be considered transporting for hire.

(Ord. No. 87.17, § 1, 4-23-87)

Reg. 16-450.2. Rental, leasing, and licensing for use of tangible personal property: membership fees; other charges.

- (a) Membership, admission, or other fees charged by any rental club or limited access lessor are considered part of taxable gross income.
- (b) Gross income from rental, leasing, or licensing for use of tangible personal property must include all charges by the lessor to the lessee for repair, maintenance, or other service upon the tangible personal property rented, leased, or licensed.
- (c) Sale of a warranty, maintenance, or service contract as a requirement of, or in conjunction with, a rental, leasing, or licensing contract is exempt.

(Ord. No. 87.17, § 1, 4-23-87; Ord. No. 96.43, 12-12-96)

Reg. 16-450.3. Rental, leasing, and licensing for use of equipment with operator.

In cases where the tangible personal property is rented, leased, or licensed with an operator provided by the lessor, the charge for the operator shall not be includable in the gross income from the rental, lease, or license of such tangible personal property if the charge for the operator and the charge for the use of the equipment are separately itemized to the lessee and separately maintained on the books and records of the lessor.

(Ord. No. 87.17, § 1, 4-23-87)

Reg. 16-450.4. Rental, leasing, and licensing for use of tangible personal property: semi-permanently or permanently installed tangible personal property.

- (a) The term "semi-permanently or permanently installed" means that the item of tangible personal property has and is expected to have at the time of installation a permanent location at the site installed, as under a long-term lease agreement, except that the person using or applying said property may eventually replace it because it has become worn out or has become obsolete or the person ceases to have the right to possession of said property.
- (b) An item of tangible personal property is deemed permanently installed if its installation requires alterations to the premises.
- (c) Examples of "semi-permanently or permanently installed tangible personal

CITY OF TEMPE
REGULATIONS - LICENSE, PRIVILEGE, AND EXCISE TAXES

property" include, but are not limited to: computers, duplicating machines, furniture not of portable design, major appliances, store fixtures.

- (d) The term does not include mobile transportation equipment or tangible personal property designed for regular use at different locations or customarily used at different locations, as under numerous short-term rental, lease, or license agreements, whether or not such property is in fact so used.
 - (1) For example, use of a mobile crane, trencher, automobile, or other similar equipment shall be considered a rental, lease, or license transaction subject to taxation only by the city or town in which such business office of the lessor is based.
 - (2) Other similar examples include, but are not limited to: camping equipment, contracting equipment, chain saw, fork lift, household items, invalid needs, janitorial equipment, reducing equipment, furniture of portable design, trucks or trailers, tools, tow bars, sump pumps, arc welders.
- (e) A rental, lease, or license agreement which specifies that the item in question shall remain, under the terms of the agreement, located within the same city or town for more than one hundred eighty (180) consecutive days shall be sufficient evidence that such rented, leased, or licensed item is "permanently or semi-permanently installed" in said city or town, except when the item is mobile transportation equipment or one of the other types of portable equipment or property described in Subsection (d) above.

(Ord. No. 87.17, § 1, 4-23-87)

Reg. 16-450.5. Rental, leasing, and licensing for use of tangible personal property: delivery, installation, repair, and maintenance charges.

- (a) Delivery and installation charges in connection with the rental, leasing, and licensing of tangible personal property are exempt from the tax imposed by Section 16-450; provided that the provisions of Regulation 16-100.2 have been met.
- (b) Gross income from the sale of a warranty, maintenance, or similar service contract in connection with the rental, leasing, and licensing of tangible personal property shall be exempt.
- (c) Separately stated charges for repair not included as part of a warranty, maintenance, or similar service contract relating to the rental, leasing, or licensing of tangible personal property are exempt from the tax imposed by Section 16-450; however, such income is subject to the provisions of Sections 16-460 and 16-465, and the provisions of Regulation 16-465.1.

(Ord. No. 88.32, § 1(28), 4-28-88; Ord. No. 96.43, 12-12-96)

CITY OF TEMPE
REGULATIONS - LICENSE, PRIVILEGE, AND EXCISE TAXES

Reg. 16-455.1. Gratuities related to restaurant activity.

Gratuities charged by or collected by persons subject to the tax imposed by Section 16-455 may be excluded from gross income if:

- (1) Such charge is separately stated upon the bill, invoice, etc. provided the customer, and such amounts are maintained separately in the books and records of the taxpayer; and
- (2) Such gratuities are distributed in total to employees of the taxpayer in addition to customary and regular wages.

(Ord. No. 87.17, § 1, 4-23-87)

Reg. 16-460.1. Distinction between retail sales and certain other transfers of tangible personal property.

- (a) Charges for transfer of tangible personal property included in the gross income of the business activity of persons engaged in the following business activities shall be deemed only as gross income from such business activity and not sales at retail taxed by Section 16-460:
 - (1) Tangible personal property incorporated into real property as part of reconstruction or construction contracting, per Sections 16-415 through 16-418.
 - (2) (Reserved)
 - (3) Job printing, per Section 16-425.
 - (4) Mining, timbering, and other extraction, but not sales of sand, gravel, or rock extracted from the ground, per Section 16-430.
 - (5) Publication of newspapers, magazines, and other periodicals, per Section 16-435.
 - (6) Rental, leasing, and licensing of real or tangible personal property, per Sections 16-445 or 16-450.
 - (7) Restaurants and bars, per Section 16-455.
 - (8) Telecommunications services, per Section 16-470.
 - (9) Utility services, per Section 16-480.

CITY OF TEMPE
REGULATIONS - LICENSE, PRIVILEGE, AND EXCISE TAXES

(b) *Distinction between construction contracting, retail, and certain direct customer service activities.*

- (1) When an item is attached or installed on real property, it is a construction contracting activity and any subsequent repair, removal, or replacement of that item is construction contracting.
- (2) Items attached or installed on tangible personal property are retail sales.
- (3) Transactions where no tangible personal property is attached or installed are considered direct customer service activities (for example: carpet cleaning, lawn mowing, landscape maintenance).
- (4) Demolition, earth moving, and wrecking activities are considered construction contracting.

(c) *The sale of sand, rock, and gravel extracted from the ground* shall be deemed a sale of tangible personal property and not mining or metallurgical activity.

(d) Sale of consumable goods incorporated into or applied to real property is considered a retail sale and not construction contracting. Examples of consumable goods are lubricants, faucet washers, and air conditioning coolant, but not paint.

(e) Installation or removal of tangible personal property which has independent functional utility is considered a retail activity.

- (1) "Tangible personal property which has independent functional utility" must be able to substantially perform its function(s) without attachment to real property. "Attachment to real property" must include more than connection to water, power, gas, communication, or other service.
- (2) Examples of tangible personal property which has independent functional utility include artwork, furnishings, "plug-in" kitchen equipment, or similar items installed by bolts or similar fastenings.
- (3) Examples of tangible personal property which does not have independent functional utility include wall-to-wall carpeting, flooring, wallpaper, kitchen cabinets, or "built-in" dishwashers or ranges.
- (4) The installation of window coverings (drapes, mini-blinds, etc.) is always a retail activity.

(Ord. No. 87.17, § 1, 4-23-87)

CITY OF TEMPE
REGULATIONS - LICENSE, PRIVILEGE, AND EXCISE TAXES

Reg. 16-460.2. Retail sales: trading stamp company transactions.

A trading stamp transaction is defined as follows: the trading stamp company issues stamps to a vendor; the vendor then provides them to its customers; and the customer then exchanges the stamps for merchandise from the trading stamp company.

The exchange transaction for the merchandise shall be deemed a retail sale and the trading stamp company a retailer. All taxes imposed by this Chapter applicable to retail transactions are therefore applicable to such exchange transactions.

The rate of tax shall be the retail rate based upon the retail dollar value of the redeemed merchandise as expressed in the redemption dollar value per book of stamps or portion thereof. The tax imposition described herein is in lieu of any Privilege or Use Tax upon the business of issuing stamps, redeeming the same, or using or storing property redeemed.

(Ord. No. 87.17, § 1, 4-23-87)

Reg. 16-460.3. Retail sales: membership fees of retailers.

Membership, admission, or other fees charged by limited access retailers are considered part of taxable gross income of the business activity of selling tangible personal property.

(Ord. No. 87.17, § 1, 4-23-87)

Reg. 16-460.4. Retail sales: professional services.

- (a) *"Professional Services"* refer to services rendered by such persons as doctors, lawyers, accountants, architects, etc. for their customers or clients where the services meet particular needs of a specific client and only apply in the factual context of the client and the final product has no retail value in itself. For example, opinion letters, workpapers, reports, etc. are not in a form which would be subject to retail sales to customers. However, transfer of items in a form which would be subject to retail sales (e.g., artwork, forms, manuals, etc.) would not be considered professional services. The issue is one of fact which must be resolved in each situation.
- (b) *Creative ("idea") labor and design labor* that do not result in tangible personal property that will be or can be sold are deemed professional services and, if charged separately and maintained separately in the taxpayer's books and records, are not includable in gross income.
- (c) *"Professional services"* shall be deemed to include those items of tangible personal property which are incidental to the services rendered, provided such tangible personal property is "inconsequential."
 - (1) Incidental transfers of tangible personal property shall be regarded as "inconsequential" if,

CITY OF TEMPE
REGULATIONS - LICENSE, PRIVILEGE, AND EXCISE TAXES

- (A) The purchase price of the tangible personal property to the person rendering the professional services represents less than fifteen percent (15%) of the charge, billing, or statement rendered to the purchaser in connection with the transaction, and
- (B) The tangible personal property transferred is not itself in a form which is subject to retail sale.
- (2) In cases where the tangible personal property transferred is deemed inconsequential, the provider of the tangible personal property so transferred is deemed the ultimate consumer of such tangible personal property, and subject to all applicable taxes imposed by this Chapter upon such transfer.
- (d) Examples:
 - (1) The transfer of paper embodying the result or work product of the services rendered by an attorney or certified public accountant is regarded as inconsequential to the charges for professional services.
 - (2) An appraisal report issued by an appraiser, reflecting such appraiser's efforts to appraise real estate, is regarded inconsequential.
 - (3) Use of a hair care product on a client's hair by a barber or beautician in connection with performing professional services is usually inconsequential. On the other hand, if the barber or beautician supplies the customer with a bottle of the product for the client's use thereafter and without the professional's assistance, the transfer of the bottle of hair care product is deemed not inconsequential.
 - (4) If a mortician properly segregates his professional services from other taxable activities on his bill (invoice, contract), his gross income would include only the income derived from the sale of tangible personal property (casket, cards, flowers, etc.) and rental, leasing, or licensing of real and tangible personal property. His charges for professional services (embalming, cosmetic work, etc.) would not be includable in gross income.

(Ord. No. 87.17, § 1, 4-23-87)

Reg. 16-460.5. Retail sales: monetized bullion; numismatic value of coins.

- (a) "Monetized Bullion" means coins or other forms of money manufactured or minted from precious metals or other metals and issued as legal tender or a medium of exchange by or for any government authorized to do so.
- (b) Any coin shall be considered to have been transferred or acquired primarily for

CITY OF TEMPE
REGULATIONS - LICENSE, PRIVILEGE, AND EXCISE TAXES

its "Numismatic value" if the sale or acquisition price:

- (1) Is equal to or greater than twice (2 times) the value of the metallic content of the coin as of the date of transfer or acquisition; and
- (2) Is equal to or greater than twice (2 times) its face value, in the case of a coin which, at the time of transfer or acquisition, was legal tender or a medium of exchange of the government issuing or authorizing its issuance.

(Ord. No. 87.17, § 1, 4-23-87)

Reg. 16-460.6. Retail sales: consignment sales.

Sales of merchandise acquired on consignment are taxable as retail sales. In cases where the merchant is acting as an agent on behalf of another dealer, sales of the consigned merchandise are taxable to the principal, provided the merchant makes full disclosure to customers that he is acting only as an agent for the named principal. However, when the principal is not deemed to be a dealer, such sales are considered to be those of the merchant and are taxable to him.

(Ord. No. 87.17, § 1, 4-23-87)

Reg. 16-465.1. Retail sales: repair services.

- (a) Fair market value of parts and labor charges. The Tax Collector may examine the reporting of all transactions covered by this Section to determine if an "arms-length" price is charged for the parts and materials. The applicable tax may not be avoided by pricing a part, which ordinarily sells to the customer at \$10, at \$5 and including the difference as "service" or "labor". In the absence of satisfactory evidence supplied by the taxpayer as to industry or business practice, the Tax Collector may use the cost of the part or materials to the taxpayer marked up by a reasonable profit, to estimate the gross income subject to tax.
- (b) Notwithstanding Regulation 16-350.1(e),
 - (1) In the case where the taxpayer does not normally and regularly sell items of tangible personal property apart from a repair transaction, the taxpayer may determine the sale price of the tangible personal property transferred by means of a "computed charge". The "computed charge" shall be the sum of the cost of the item of tangible personal property transferred, plus a "reasonable markup." The "reasonable markup" shall be that amount needed to achieve a representative retail price for which such items of tangible personal property are normally sold at retail by comparable businesses within the State (not under circumstances involving the combination of such sale with the providing of repair services). The taxpayer shall have the initial responsibility of determining such reasonable markup, and providing to the Tax Collector, if requested, the

CITY OF TEMPE
REGULATIONS - LICENSE, PRIVILEGE, AND EXCISE TAXES

basis for his determination.

- (2) In the event that there is a disagreement between the Tax Collector and the taxpayer as to the proper determination of the "computed charges", the burden shall be upon the taxpayer to satisfy the Tax Collector, the Hearing Officer in the event of a hearing, or the court in any subsequent court action involving an assessment, of the validity of the taxpayer's method of determination of such "computed charges". The determination by the Tax Collector as to the proper "computed charge" shall be considered valid, and shall be sustained unless it is proven by the taxpayer that such determination is arbitrary and unreasonable.

(Ord. No. 87.17, § 1, 4-23-87)

Reg. 16-465.2. Retail sales: warranty, maintenance, and similar service contracts.

- (a) Gross income from sales of warranty, maintenance, and service contracts is exempt from the tax imposed by Section 16-460.
- (b) Transfers of tangible personal property in connection with a service, warranty, guaranty, or maintenance agreement between a vendor and a vendee shall be subject to tax under Section 16-460 only to the extent of gross income received from separately itemized charges made for the items of property transferred.
- (c) The gross income derived from a maintenance insurance agreement, which agreement is entered into between the purchaser and any person other than the seller is not subject to tax imposed by Section 16-460. If the provider of the maintenance insurance agreement pays for tangible personal property on behalf of the insured in the performance of the agreement, such sales are subject to all applicable taxes imposed by this chapter.
- (d) Charges for tangible personal property provided under the terms of a warranty, maintenance, or service contract exempted under Section 16-465 are subject to tax as retail sales.
- (e) However, gross income received by a dealer from a manufacturer for work performed under a manufacturer's warranty is not taxable under Section 16-460.

(Ord. No. 87.17, § 1, 4-23-87; Ord. No. 96.43, 12-12-96)

Reg. 16-465.3. Retail sales: sale of containers, paper products, and labels.

- (a) The sale of a container or similar packaging material which contains personal property and which is transferred to the customer with the sale of the product is not taxable as a sale for resale. Examples of such nontaxable containers include but are not limited to:
 - (1) Packing materials sold to a manufacturer of video equipment for

CITY OF TEMPE
REGULATIONS - LICENSE, PRIVILEGE, AND EXCISE TAXES

containment of the product during shipment.

- (2) Cellophane-type wrap sold to a meat department or butcher for containment of the individually wrapped or contained meat.
 - (3) Bags used to contain loose fungible goods such as fruits, vegetables, and other products sold in bulk, where such bags or containers are used to contain and measure the amount purchased by the customer.
 - (4) Shopping bags and similar merchandising bags sold to grocery stores, department stores or other retailers.
 - (5) Gift wrappings and gift boxes sold to department stores or other retailers.
 - (b) Sales of non-returnable or disposable paper (and similar products such as plastic or styrofoam) cups, lids, plates, bags, napkins, straws, knives, forks and other similar food accessories to a restaurant or others taxable under Section 16-455 for transfer by the restaurant to its customer to contain or facilitate the consumption of the food, drink or condiment are sales for resale and not taxable.
 - (c) Where a retailer imposes a charge for gift wrapping and the charge includes the container, paper, and other appropriate materials, the wrapping charge shall be considered a sale.
 - (d) Charges for returnable containers, where the charges are imposed on the customer, are subject to tax at the time of the transaction. A credit may be taken for the amount of refund after such refund is made.
 - (e) The sale of labels to a purchaser who affixes them to a primary container is a sale for resale and not taxable. Directional or instructional material included with products sold are considered to be part of the product and a sale for resale. However, the sale of items such as price tags, shipping tags, and advertising matter delivered to the customer in connection with the retail sale is taxable to the retailer as a retail sale to it, and is not exempt as a sale for resale.
- (Ord. No. 87.17, § 1, 4-23-87; Ord. No. 88.32, § 1(29), 4-28-88; Ord. No. 95.03, 1-12-95)

Reg. 16-465.4. Retail sales: aircraft acquired for use outside the State.

"Aircraft acquired for use outside the State" means aircraft, navigational and communication instruments, and other accessories and related equipment sold to:

- (a) Any foreign government for use by such government outside of this State.
- (b) Persons who are not residents of this State and who will not use such property in this State other than in removing such property from this State. This Subsection also applies to corporations that are not incorporated in this State, regardless of

CITY OF TEMPE
REGULATIONS - LICENSE, PRIVILEGE, AND EXCISE TAXES

maintaining a place of business in this State, if the principal corporate office is located outside this State and the property will not be used in this State other than in removing the property from this State.

(Ord. No. 87.17, § 1, 4-23-87; Ord. No. 95.03, 1-12-95)

Reg. 16-470.1. Telecommunication services.

- (a) Gross income from the business activity of providing telecommunication services to consumers within this City shall not include:

- (1) Charges for installation, maintenance, and repair of telecommunication equipment which are subject to the provisions of Sections 16-415, 16-416, or 16-417 (construction contracting); 16-445 (real property rental); 16-450 (tangible personal property rental); or 16-460 (retail sales); depending upon the nature of the work performed.
- (2) Separately billed advertising charges which are subject to the provisions of Section 16-405 or 16-435.

- (b) Mobile equipment. In cases where the customer is being provided telecommunication services to receiving/transmission equipment designed to be mobile in nature (for example, mobile telephones, portable hand-held two-way radios, paging devices, etc.), the provider shall, for the purposes of the tax imposed by this Section, determine whether such provider's customers are "within this City" as follows:

- (1) By the billing address of the customer, provided that such address is a permanent residence or business location of the consumer within the State.
- (2) In all other cases, the business location of the telecommunications provider.

(Ord. No. 87.17, § 1, 4-23-87)

Reg. 16-475.1. Distinction between transporting for hire and certain related activities.

The hiring of mobile equipment (cranes, airplanes, limousines, etc.) is deemed rental, leasing, or licensing for use of tangible personal property whenever the charge is for a fixed sum or hourly rate. By comparison, the activity of a common carrier conveying goods or persons for a fee based upon distance, and not time, shall be considered transporting for hire.

(Ord. No. 87.17, § 1, 4-23-87)

Reg. 16-520.1. Reports made to the City.

- (a) Each taxpayer shall provide, as a minimum, all of the following when reporting taxes due as provided in this Chapter:

CITY OF TEMPE
REGULATIONS - LICENSE, PRIVILEGE, AND EXCISE TAXES

- (1) Legal business name of the taxpayer or his agent.
- (2) Mailing address of the taxpayer.
- (3) City Privilege License number of the taxpayer.
- (4) Period of time for which the report is intended.
- (5) For each category of income to which the taxpayer is subject, for the reporting period, as provided on the official City tax return:
 - (A) All amounts subject to, excluded from, exempt from, or deductible from the tax imposed upon that category of business activity, summarized in total as "gross receipts" of that category of business activity.
 - (B) The total amount claimed as excludable, exempted, or deducted from such "gross receipts", itemized as provided on the official City tax return, and summarized in total as "total deductions" for that category.
 - (C) The difference between such "gross receipts" and "total deductions" as "net taxable" for that category.
 - (D) The tax due and payable for that category.
- (6) That total amount subject to Use Tax, summarized as "net taxable", and the Use Tax due and payable for that reporting period.
- (7) Any excess tax collected which is due and payable.
- (8) Any claimed tax credits against taxes due and payable.
- (9) Total amount remitted with the return.
- (10) A statement verifying that the information provided on the return is accurate to the best of the preparer's knowledge. Such statement must be accompanied by a dated signature of the preparer, and also show the preparer's title or relationship to the taxpayer.

(Ord. No. 87.17, § 1, 4-23-87)

Reg. 16-520.2. Change of method of reporting.

- (a) Any taxpayer electing to change his reporting method shall be permitted to do so only upon filing a written request to the Tax Collector and after receiving

CITY OF TEMPE
REGULATIONS - LICENSE, PRIVILEGE, AND EXCISE TAXES

written approval of the Tax Collector. The approval shall state the effective date of the change.

- (b) The Tax Collector may postpone such approval to allow for examination of the records of the taxpayer and may further require that all tax liability be satisfied up to the effective date of the change.
- (c) Failure of the taxpayer to notify the Tax Collector and await approval before changing the method of reporting will subject the taxpayer to interest and penalties if his original method of reporting would produce higher taxes due the City. When a person makes such change without the consent of the Tax Collector, the Tax Collector may audit his books and records to verify the tax liability as of the date of the change.
- (d) Any taxpayer who has failed to indicate a choice of reporting method upon the application for a Privilege License shall be deemed to have chosen the accrual method of reporting.

(Ord. No. 87.17, § 1, 4-23-87)

Reg. 16-555.1. Administrative Request for the attendance of witnesses or the production of documents; service thereof; remedies and penalties for failure to respond.

- (a) If a taxpayer refuses or fails to comply in whole or in part with a request to provide records authorized by Section 16-555, the Tax Collector may issue his written Administrative Request which shall:
 - (1) Designate the individual to provide information.
 - (2) Describe specifically or generally the information to be provided, and any documents sought to be examined.
 - (3) State the date, time, and place in which the individual shall appear before the Tax Collector to provide the information and to produce the documents sought.
 - (4) Be directed to:
 - (A) Any director, officer, employee, agent, or representative of the person sought to be examined; or
 - (B) Any independent accountant, accounting firm, bookkeeping or financial service retained or employed by such person for any purpose connected with business activity subject to taxation; or
 - (C) Any other person who, in the opinion of the Tax Collector, has

CITY OF TEMPE
REGULATIONS - LICENSE, PRIVILEGE, AND EXCISE TAXES

knowledge of facts bearing upon any tax liability of the person or taxpayer from whom information is sought.

- (b) The failure of a taxpayer to comply with reasonable requests for records without good reason or cause may, in the exercise of judicial discretion by a court, be held to constitute a failure to exhaust administrative remedies.

(Ord. No. 87.17, § 1, 4-23-87)

Reg. 16-571.1. Collection of tax in jeopardy.

Evidence that collection of tax due is in jeopardy shall include documentation that:

- (a) The taxpayer is going out of business.
- (b) The taxpayer has no City Privilege License or has no permanent business location in the State.
- (c) The taxpayer has failed to timely pay any tax (or penalties and interest thereon) due to the City on three (3) or more occasions within the previous thirty-six (36) calendar months.
- (d) The taxpayer has remitted payment by check, which has been dishonored.
- (e) The taxpayer has failed to comply with a formal written request of the Tax Collector made pursuant to Regulation 16-555.1.

(Ord. No. 87.17, § 1, 4-23-87)